



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG-2021-0336]

RIN 1625-AA09

Drawbridge Operation Regulation; Fox River, Oshkosh, WI

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is amending the operating schedule that governs the Tayco Street Bridge, mile 37.52, the Main Street Bridge, mile 55.97, the Jackson Street Bridge, mile 56.22, the Wisconsin Street Bridge, mile 56.72, and the Congress Avenue Bridge, mile 58.01, all over the Fox River near Oshkosh, Wisconsin. This rule will allow the bridges to operate remotely and will not change the operating schedule of the bridge. The Wisconsin Department of Transportation (WisDOT) requested the change.

DATES: This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>. Type the docket number USCG-2021-0336 in the “SEARCH” box and click “SEARCH”. In the Document Type column, select “Supporting & Related Material.”

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or e-mail Mr. Lee D. Soule, Bridge Management Specialist, Ninth Coast Guard District; telephone 216-902-6085, e-mail Lee.D.Soule@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	Federal Register
OMB	Office of Management and Budget
NPRM	Notice of Proposed Rulemaking
§	Section
U.S.C.	United States Code
WisDOT	Wisconsin Department of Transportation

II. Background Information and Regulatory History

On July 6, 2021, we published a notice of temporary deviation from regulations and request for comments in the Federal Register (86 FR 35402). We accepted comments until November 1, 2021. This deviation allowed mariners to experience the proposed regulation and comment about the operations of the bridges. We received nine comments that we addressed and incorporated into the NPRM that we published in the Federal Register (87 FR 18751) on March 31, 2022. We solicited comments on the NPRM until May 31, 2022, and we did not receive any additional comments.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority 33 U.S.C. 499.

The Main Street Bridge, mile 55.97, provides a horizontal clearance of 89 feet and a vertical clearance of 11 feet in the closed position, the Jackson Street Bridge, mile 56.22, provides a horizontal clearance of 97 feet and a vertical clearance of 11 feet in the closed position, the Wisconsin Street Bridge, mile 56.72, provides a horizontal clearance of 75 feet and a vertical clearance of 12 feet in the closed position, the Congress Avenue Bridge, mile 58.01, provides a horizontal clearance of 75 feet and a vertical clearance of 13 feet in the closed position, and the Tayco Street Bridge provides a horizontal clearance of 63 feet and a vertical clearance of 3 feet in the closed position. All of these bridges are over the Fox River and provide an unlimited clearance in the open position, and are governed by the regulations found in 33 CFR 117.1087.

The WisDOT requested to operate these bridges remotely and this required an update to the CFR and a sufficient public comment period on the bridge operations before any changes were made. This will not change the schedule of the bridges.

Because this rule will not change the bridge schedule or the movement of vehicles over the bridges, vehicle counts were not consulted.

Approximately 100 powered and unpowered recreational vessels pass through these bridges every day during the summer. Commercial salvage and construction vessels use the waterway in limited numbers.

IV. Discussion of Comments, Changes and the Final Rule

During the Test Deviation, we provided a comment period of 180 days and received 9 comments that were used to develop and publish the NPRM; the NPRM provided an additional 60 days for the public to comment. We did not receive any additional comments pursuant to the NPRM.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive Orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive Orders.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, it has not been reviewed by the Office of Management and Budget (OMB).

There will be no burden to any mode of transportation. The only change is the bridges will operate remotely.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard did not receive any comments from the Small Business Administration on this rule. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the bridge may be small entities, for the reasons stated in section V. A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency’s responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

D. Federalism and Indian Tribal Government

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

We did not receive any comments from any Indian Tribal Governments.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble. We did not receive any comments from State, local, or tribal governments.

F. Environment

We have analyzed this rule under Department of Homeland Security Management

Directive 023-01, Rev.1, associated implementing instructions, and Environmental Planning Policy COMDTINST 5090.1 (series) which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f). The Coast Guard has determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule promulgates the operating regulations or procedures for drawbridges and is categorically excluded from further review, under paragraph L49, of Chapter 3, Table3-1 of the U.S. Coast Guard Environmental Planning Implementation Procedures.

Neither a Record of Environmental Consideration nor a Memorandum for the Record are required for this rule.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05-1; and Department of Homeland Security Delegation No. 0170.1.

2. Amend § 117.1087 by adding paragraph (b)(3) to read as follows:

§ 117.1087 Fox River.

* * * * *

(b) * * *

(3) All drawbridges between mile 37.52 and 58.01, are authorized to be operated remotely, and are required to operate and maintain a VHF-FM Marine Radio.

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M. J. Johnston,
Rear Admiral, U.S. Coast Guard,
Commander, Ninth Coast Guard District.

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